

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 803 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?-Yes.
2. To be referred to the Reporter or not?
:Yes.
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?
:-No.

MANISHKUMAR MAGANLAL PATEL

Versus

MUNICIPAL CORPORATION OF CITY OF THE SURAT

Appearance:

MR KK TRIVEDI for Petitioner
Mr.M. Purohit, for MR PRASHANT G DESAI,
for Respondent No. 1
MR S.P. Hasurkar, for Respondent No. 2
MR JC SHETH for Respondent Nos. 3, 4, 5 and 6

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

Date of decision: 23/06/1999

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

This is a public interest litigation initiated at the instance of a resident of Surat. Town Planning Scheme No.4 was finalized by the 1st respondent-Corporation and as per the scheme, Varachha-Kamrej State Highway is to be widened and a portion of Original Plot No.268, now vesting with the Railway, is required for the widening of the said road. The grievance of the petitioner is that the property required by the Corporation for implementing the Town Planning Scheme is not being handed over by the Railway to the Corporation and, therefore, the scheme could not be implemented since last 15 years and it is prayed that this Court shall issue a writ of mandamus, directing the 1st respondent to implement the Town Planning Scheme and that the 1st respondent shall further be directed to take action under Sections 68 and 69 of the Gujarat Town Planning and Urban Development Act, 1976.

We heard the petitioner's counsel and the counsel for respondents 3 to 6. The counsel for the petitioner submitted that even though the Town Planning Scheme came into existence since long, the 1st respondent-Corporation has not taken any steps so far to see that the Railway property is acquired and the road is widened. The petitioner's counsel contended that under Sections 68 and 69 of the Gujarat Town Planning and Urban Development Act, 1976, the 1st respondent-Corporation was bound to enforce the scheme by invoking the powers conferred on it under the above sections. The counsel for the Railway submitted that the property in question is very much required by the Railway and, therefore, it cannot be surrendered to the 1st respondent-Corporation for widening the road. It is further stated that the Railway has made request to the Corporation to grant some more land for the operational purposes of the Railway.

Section 68 of the Act says that after the publication of the preliminary scheme, the persons who are in occupation of the land included in the preliminary scheme can be summarily evicted by the authorities. Section 69 of the Act gives the mode in which the eviction could be enforced and it says that the authority can remove, pull down, or alter any building or other work in the area included in the scheme which is such as contravenes the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with. If any question arises as to whether any building or work contravenes a town planning scheme or whether any provision of a town planning scheme is not complied with, the authorities can refer the matter to the Government and the decision of the State Government

shall be final. Under sub-section (5) of Section 69, it is specifically stated that the provisions of Section 69 shall not apply to any operational construction undertaken by the Central Government or a State Government. The term "operational construction" has been defined under section 2(xvii) of the Act as under :-

"Sec. 2. Definition.

In this Act, unless the context otherwise requires,--

(xvii) "operational construction" means any construction whether temporary or permanent, which is necessary for the operation, maintenance, development, or execution of any of the following services, namely :

(a) railways;

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) any other service which the State Government may, if it is of opinion that the operation, maintenance, development or execution of such service is essential to the life of the community, by notification, declare to be a service for the purpose of this clause.

Explanation.--For the removal of doubts, it is hereby declared that the construction of--

(i) new residential buildings (other than gate lodges, quarters for limited essential operational staff and the like), roads and drains in railway colonies, hotels, clubs, institutes and schools, in the case of railways; and

(ii) a new building, new structure or new installation or any extension thereof, in the case of any other service,

shall not be deemed to be construction within the meaning of this clause;...."

The counsel for respondents 3 to 6 submitted that the area included in the Town Planning Scheme, which is in the possession of the Railway, is having a residential building, being used for the residence of the employees. Therefore, it is clear that the Railway property, which is included in the Town Planning Scheme, would certainly come within the definition of "operational construction". Section 69 makes it abundantly clear that the powers given to the Town Planning Authority under this section shall not apply to operational construction. From the above provision, it is clear that the present scheme as such cannot be forcibly enforced against the Railway. Therefore, there cannot be any writ of mandamus or any other writ or order, directing the Railway to hand over the property to the Town Planning Authority for the implementation of the scheme. However, this does not mean that the Town Planning Scheme cannot be enforced against any Railway property. It is for the 1st respondent-Corporation to have any meaningful dialogue with the Railway authorities and come to a settlement regarding this property and the 1st respondent can take appropriate proceedings to see that the scheme is implemented. The demand of the Railway for the additional property can also be considered by the Corporation. Without prejudice to such steps being taken by the 1st respondent, the Special Civil Application is disposed of.

(apj)